

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Pike Run Sportsmen's LTD. Petitioner-Appellant, v. Muscatine County Board of Review, Respondent-Appellee.	ORDER Docket No. 11-70-0024 Parcel No. ORSC 11-29-400-006 Docket No. 11-70-0025 Parcel No. ORSC 11-21-300-003 Docket No. 11-70-0026 Parcel No. ORSC 11-28-100-010
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On October 11, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Pike Run Sportsmen's LTD, (Pike Run), was represented by Larry H. Thumann, Sr. The Muscatine County Board of Review designated County Attorney Alan Ostergren as its legal representative, but he did not appear at hearing. Instead, County Assessor Dale L. McCrea was present and represented the Board of Review. Both submitted evidence in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Pike Run, the owner of property located in Orono Township, Muscatine County, Iowa, appeals from the Muscatine County Board of Review regarding its 2011 property assessments. The appeal includes three agriculturally classified parcels totaling 206.256 acres, of which 126.62 acres are exempt forest reserve and 79.636 are taxable acres. All of the parcels are unimproved.

Allocation of the forest reserve and taxable acres to the individual parcels are as follows:

Docket Number	Parcel Number	Total Acres	Forest Reserve Acres	Taxable Acres
11-70-0024	ORSC 11-29-400-006	13.390	6.640	6.750
11-70-0025	ORSC 11-21-300-003	40.416	5.530	34.886
11-70-0026	ORSC 11-28-100-010	152.450	114.45	38.00
	Total	206.256	126.620	79.636

The 2011 assessments for each parcel are as follows:

Docket Number	Parcel Number	Total Assessed Value	Forest Reserve Exemption	Adjusted Total Assessed Value
11-70-0024	ORSC 11-29-400-006	\$9030	\$4450	\$4580
11-70-0025	ORSC 11-21-300-003	\$24,220	\$4270	\$19,950
11-70-0026	ORSC 11-28-100-010	\$148,000	\$108,830	\$39,170
	Total	\$181,250	\$117,550	\$63,700

Pike Run filed a separate protest on all three parcels with the Muscatine County Board of Review. Each protest claimed the following grounds: that the properties are not assessable, are exempt, or misclassified under Iowa Code section 441.37(1)(c); and that there is an error in the assessment under section 441.37(1)(d). Under the ground the property is not assessable, Pike Run stated “the soil types listed on the ag land detail report are incorrect due to severe erosion from continuous flooding.” Pike Run’s claimed error is that “crop productivity is impossible on these three parcels due to timber, continuous flooding, and a government easement.”

The Board of Review denied the protests.

Pike Run then appealed to this Board on the same grounds. It again references errors in the classification of soil type and asserts crop productivity is “impossible.” Pike Run does not provide an opinion as to what the correct values should be. Based upon the language presented, the claim that the properties are not assessable is essentially an error claim. Accordingly, we will only consider a claim of error.

Larry H. Thumann, Sr. testified on behalf of Pike Run at the hearing. Thumann provided maps and pictures of the subject sites. Each parcel is unique. Parcel ORSC 11-29-400-006, has a total site size of 13.39 acres. This parcel is bisected by a designated “flowing water way,” which Pike Run neither owns, nor is being assessed for. McCrea testified the site was in fact bisected. This was evident on the aerial maps submitted as evidence. Thumann testified this was a low-lying area and could not be “cropped.”

Parcel ORSC 11-28-100-010, is the largest of the three parcels and has a total site size of 152.453 acres. This parcel has 126.62 acres in forest reserve. Parcel ORSC 11-21-300-003 has a total of 40.416 acres, with 5.53 acres in forest reserve. Thumann testified the remaining 60.722 acres, which are not within the forest reserve on these two sites, are also unable to be “cropped” for a variety of reasons, including Pike Run’s decision to put the land into a government wetland program.

Because they cannot be put into crop, Thumann essentially asserts they have no “productivity” and believes the CSR ratings should be changed to reflect this situation. We note Pike Run voluntarily chose to put the sites into a wetland conservatory, and as a result accepted the stipulation it cannot be put into crop.

We also note that of the remaining 60.722 acres on the subject’s two larger parcels, the ag land detail reports submitted by Thumann indicate there is a total of 21.95 acres of water. The CSR ratings for water are zero. This means that of the 192.869 total acres on these two parcels, there is only 38.772 acres which are effectively assessed. Considering all three of Pike Run’s parcels, which total 206.256 acres, only 45.522 acres are effectively assessed when forest reserve and water areas are removed.

Lastly, Pike Run seems to be misinterpreting the term “productivity.” The term productivity is relevant because the subject sites are classified agricultural, which requires the assessments to be based on productivity and net earning capacity and not market value. Thumann testified it was not Pike Run’s intent to request a reclassification. In fact, he believes agricultural is the correct classification.

Rather, he believes the CSR's should be lowered to reflect the sites that are not or cannot be cropped. He did not state what the CSR's should be lowered to and he did not provide any support for changing the CSR's. Again, we note that while the lay of the land may prohibit certain agricultural activity in areas of the subject sites, the decision not to use the land for farming or other agricultural activity is a personal decision by Pike Run.

McCrea testified that all the agriculturally classed property in Muscatine County was assessed based on productivity and net earning capacity.

At this Board's request, McCrea provided the Forest Reserve applications for the subject sites, as well as an aerial map which is assumed to demonstrate the areas included within the forest reserve exemption. Thumann testified he was not arguing that additional acres should be included in the forest reserve. He again stated Pike Run simply believed the CSR ratings are not reflective of the lack of productivity on the sites.

Thumann also testified the subject sites have had severe erosion due to flooding. He submitted data from 1991 to 2011 which reported the yearly Cedar River water levels. It is Pike Run's contention this data demonstrates erosion because of flooding, as well as demonstrating the land cannot be cropped because of flooding. While we agree with Pike Run that its land may be low-lying and prone to flooding, we do note this would have been taken into consideration with the CSR ratings applied to the sites.

For example, as previously noted, the subject parcels have a total of nearly twenty-two acres of water area with a zero CSR. With the exception of water, CSR ratings range from 5-100, with 100 being the best. According to THE 2008 STATE OF IOWA REAL PROPERTY APPRAISAL MANUAL, the CSR reflects the integrated effect of numerous factors that influence the yield potential and use of the soil for row crop production. Soil properties and weather conditions are the dominant factors that affect yield potential. An example would be subject parcel 11-29-400-006, which has 1.673 acres identified

as Chelsea Loam Fine Sand with a CSR rating of five applied. Parcels 11-21-300-003 and 11-28-100-010 have just over twenty-two acres with a CSR rating of twenty. Overall, the subject sites (not including areas noted as water) have CSR ratings from 5 to 80. The subject parcels have a total of roughly twenty-two acres of water with a zero CSR; roughly twenty-four acres with a CSR between 78 to 80; and the remaining estimated one hundred and sixty acres have CSR's of 60 or less.

McCrea, in an effort to exhaust all avenues of understanding Pikes Run's concerns, consulted with Julie McMichael, an Area Resource Soil Scientist with the United States Department of Agriculture. In a letter to McCrea, dated September 16, 2011, McMichael states it is her belief the areas in question have been mapped within the guidelines of soil survey mapping conventions. McMichael's letter was technical and explained the most likely slope which would be associated with a site in a flood plain, as well as the types of soils and the components of sand in the soil profile. The letter stated since the subject is on a flood plain, it most likely has less than a two percent slope. And that severe erosion is unlikely on zero to two percent slopes. Lastly, McMichaels noted the USDA does not adjust soil mapping for soils that have been changed because of program purposes.

The Appeal Board finds there is insufficient evidence to support the claim that there are errors on any of the subject parcels.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or

additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Section 441.37(1)(d) is not limited solely to clerical or mathematical errors. The plain language of section 441.37(1)(d), on which the appellant rests his claim, allows a protest on the ground “[t]hat there is an error in the assessment.” § 441.21(1)(d). The administrative rule interpreting this section indicates that the error may be more than what is alleged by the Board of Review. While “[a]n error in the assessment *would most probably* involve erroneous mathematical computations or errors in listing the property[,] [t]he improper classification of property also constitutes an error in the assessment.” Iowa Administrative r. 701-71.20(4)(b)(4) (emphasis added). This language suggests that other errors may constitute grounds for appeal pursuant to section 441.37(1)(d).

Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Manual*, and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. Pike Run’s parcels all carry an agricultural classification, which requires that they are valued using the set formula. *See* Iowa Admin. Code r. 701-71.3, 701-71.12.

Pike Run did not offer persuasive evidence which supports the assertions the CSR ratings are incorrect.

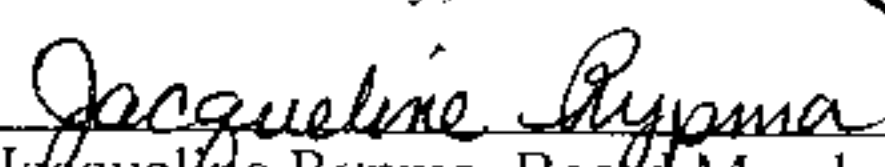
We find insufficient evidence has been presented to support the claim that the subject sites have errors in the assessments. We, therefore, affirm those assessments of parcel numbers Parcel ORSC 11-29-400-006; Parcel ORSC 11-21-300-003; and Parcel ORSC 11-21-100-010, as determined by the Muscatine County Board of Review as of January 1, 2011.

THE APPEAL BOARD ORDERS the January 1, 2011, assessment of Pike Run Sportsmen's LTD's agriculturally classified parcels ORSC 11-29-400-006; ORSC 11-21-300-003; and ORSC 11-21-100-010 are affirmed.

Dated this 28 day of November 2011,


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-28</u> , 2011	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	